

46409  
DO

SERVICE DATE – MAY 8, 2018

SURFACE TRANSPORTATION BOARD

DECISION AND NOTICE OF INTERIM TRAIL USE OR ABANDONMENT

Docket No. AB 70 (Sub-No. 6X)

FLORIDA EAST COAST RAILWAY, L.L.C.—ABANDONMENT  
EXEMPTION—IN MIAMI-DADE COUNTY, FLA.

Decided: May 7, 2018

Florida East Coast Railway, L.L.C. (FEC) filed a verified notice of exemption under 49 C.F.R. pt. 1152 subpart F—Exempt Abandonments to abandon an approximately 1.21-mile rail line on its South Little River Branch Line, between mileposts LR 11+3989 and LR 13+0000 (the Line), in Miami-Dade County, Fla. Notice of the exemption was served and published in the Federal Register on February 10, 2016 (81 Fed. Reg. 7,185). The exemption became effective on March 11, 2016.

The Board's Office of Environmental Analysis (OEA) served an environmental assessment (EA) on February 16, 2016, solicited comments, and issued a Final EA. By decision served March 10, 2016, the Board imposed two conditions recommended in the Final EA: a historic preservation condition pursuant to Section 106 of the National Historic Preservation Act, 16 U.S.C. § 470f, and a condition requiring FEC to consult with the South Florida Water Management District prior to conducting salvage activities over the Tamiami Canal.

By decision and notice of interim trail use or abandonment (NITU) served on November 21, 2016, the proceeding was reopened and was modified to implement interim trail use/rail banking under the National Trails System Act (Trails Act), 16 U.S.C. § 1247(d), and 49 C.F.R. § 1152.29. The NITU authorized a 180-day period for Florida East Coast Industries, LLC (FECI) to negotiate with FEC for interim trail use on the Line. On July 18, 2017, FEC and FECI notified the Board that they had entered into a railbanking/interim trail agreement.

On April 9, 2018, FECI and FECI LT1 LLC (LT1) jointly filed a petition requesting that the Board: (1) vacate the NITU served on November 21, 2016; (2) issue a replacement NITU that (a) substitutes LT1 for FECI as the trail sponsor and (b) covers the portion of the Line between mileposts LR 11+3989 and LR 12+4502.52 (the Railbanked Segment); and (3) reinstate FEC's exemption authority to abandon the remainder of the Line, between mileposts LR 12+4502.52 and LR 13+0000 (the Remaining Segment), subject to satisfaction of the outstanding Section 106 condition.

FEC separately filed a statement indicating that it does not object to the joint petition. It states that upon reinstatement of the abandonment exemption for the Remaining Segment, and

subject to removal of the Section 106 condition, FEC will consummate abandonment of the Remaining Segment and provide notice to the Board that it has done so.

As required by 49 C.F.R. § 1152.29, LT1 submitted a statement indicating its willingness to assume full responsibility for: (i) management of the right-of-way; (ii) any legal liability arising out of the transfer or use of the right-of-way (unless the user is immune from liability, in which case it need only indemnify the railroad against any potential liability); and (iii) the payment of any and all taxes that may be levied or assessed against the right-of-way. LT1 acknowledges that interim trail use is subject to possible future reconstruction and reactivation of the right-of-way for rail service. Accordingly, the request will be granted, a replacement NITU will be issued, and FEC's abandonment authority will be reinstated for the Remaining Segment. If FEC wishes to abandon the Remaining Segment, it must satisfy any outstanding conditions, including removal of the Section 106 condition.<sup>1</sup>

It is ordered:

1. This proceeding is reopened.
2. The NITU served on November 21, 2016, is vacated.
3. A replacement NITU applicable to LT1 as interim trail sponsor with respect to the portion of the Line between mileposts LR 11+3989 and LR 12+4502.52 is issued, effective on the service date of this decision and notice.
4. Interim trail use/rail banking is subject to the future restoration of rail service and to the new sponsor's continuing to meet the financial obligations for the right-of-way.
5. If the trail sponsor intends to terminate trail use, it must send the Board a copy of this decision and notice and request that it be vacated on a specified date.
6. FEC's abandonment authority issued on February 10, 2016, as modified on March 10, 2016, is reinstated with respect to the portion of the Line between mileposts LR 12+4502.52 and LR 13+0000, subject to any outstanding conditions.
7. This decision and notice is effective on its service date.

By the Board, Scott M. Zimmerman, Acting Director, Office of Proceedings.

---

<sup>1</sup> A notice of consummation must be filed within 60 days of satisfaction, expiration, or removal of any remaining legal or regulatory barriers to consummation. 49 C.F.R. § 1152.29(e)(2).